BAIL SLIP

The Appellants/Accused namely (1)Sakthivel @ Sakthi (Since abated) (2)Senthilkumar @ Kurali (3)Easwaran @ Kakkayan @ Mechanic (4)Saravanan @ Angayee Saravanan (5)Gnanavelu @ Velu @ Kuppanna Velu (Accused 1 to 5) were directed to be released on bail as per order of this Court dated 30.4.99 and made in Crl.M.P. No.2882 and 3069/1999 in CA NO.644/96 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.12.2004

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE N.KANNADASAN

Criminal Appeal No. 644 of 1996

1. Sakthivel @ Sakthi
2. Senthilkumar @ Kurali
3. Easwaran @ Kakkayan @ Mechanic
4. Saravanan @ Angayee Saravanan
5. Gnanavelu @ Velu @ Kuppanna Velu. ... Appellants/Accused

Vs

State rep. by
Inspector of Police,
Erode Town Police Station. ... Respondent/Complainant

Prayer: Appeal against the judgment passed by the learned II Additional Sessions Judge, Erode, in S.C.No. 76 of 1995 dated : 14.8.1996.

For Appellants : Mr.Asokan, S.C., for
M/s.R.Asokan for A1,A2, A4 & A5.

Mr.N.Doraisamy for
M/s.D.Lakshmikalyani for A3

For Respondent : Mr.V.M.R. Rajendran
Additional Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by N. DHINAKAR, J)

This appeal is by A-1 to A-5 in S.C.No.76 of 1995 on the file of the learned II Additional Sessions Judge, Erode.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

2. It is reported that after the filing of the appeal by the appellants, the first appellant, Sakthivel alias Sakthi, who was arrayed as A.1, died on 26.6.2002 and death was registered with the Registrar of Births and Deaths, Pallipalayam, Tiruchengode Taluk, Namakkal District, on 28.6.2002. A certified copy of the certificate issued by the said Registrar attested by the Sub Inspector of Police, Pallipalayam Police Station, Namakkal District, is also produced by the Additional Public Prosecutor to the above effect. He also submits that he has instructions to submit to the Court that Sakthivel died on 26.6.2002 and the same is also endorsed by the counsel appearing for the first appellant. In view of the death of R.Sakthivel, the first appellant, the appeal filed by him abates.

3. In this judgment, appellants 2 to 5 and the first appellant, who died after the filing of the appeal, will be referred to as A-1 to A-5 in the same order as they were arrayed before the learned Sessions Judge, for the sake of convenience.

4. A-1 to A-5 were charged under Section 120-B IPC. on an allegation that on the mid night of 30.1.1994, they conspired to commit the death of Pugazhenthi. Charge No.2 was framed against them under Section 148 IPC. on the allegation that in pursuance of the conspiracy hatched between them on the same day at mid night, A-1 to A-5, arming with aruvals and pichuva knives, formed themselves into an unlawful assembly and that A-1 cut the deceased twice on the neck with an aruval leading to his death and A-2 to A-5 have shared the common object of A-1 by A-2 cutting the deceased on the stomach, A-3 on the head, A-4 on the back of chest and A-5 on the leg. The learned Sessions Judge, finding A-1 to A-5 guilty under Section 120-B IPC., did not impose any separate sentence, while he sentenced each one of them to one year rigorous imprisonment under Section 148 IPC. A-1, on being found guilty under Section 302 IPC., was sentenced to imprisonment for life. A-1 to A-5 were also convicted and sentenced to imprisonment for life under Section 302 read with 149 IPC. The present appeal is by all the accused and they challenge their conviction and sentence.

5. The case of the prosecution is this:-

P.W.1 is the brother of the deceased. One month prior to the date of incident, P.W.5 and the deceased went to Royal theater to witness a movie. A-3 and A-4 also came to the theater accompanied by their spouses. P.W.5 and the deceased entered the theater and the deceased made fun of a girl in the theater. A-3, under the mistaken impression that the deceased is making fun of his wife, questioned the deceased and asked him as to how he could make fun of his wife. The deceased informed him that he is not making fun of his wife, but someone else. A-4 supported A-3, who were related to each other. Thereafter, A-3 and A-4 went away and the deceased and P.W.5 also went away. A week prior to the date of incident at about 9.30 p.m., the deceased and P.W.5 were standing in front of Abhirami theater. A-3 and A-5, who came in a T.V.S.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Moped alighted on seeing P.W.5 and the deceased. A-3 asked the deceased that he should seek pardon for making fun of his wife and the deceased was also threatened. The deceased told them that he did not make fun of the wife of A-3, but A-3 and A-4 did not accept his explanation and attempted to beat him. The deceased pushed them by placing his hand on the chest. A-3 and A-4 left the place after telling P.W.5 and the deceased that they will come back with A-1 and A-2. This was at 10.00 p.m. At 10.30 p.m., P.W.5 and the deceased were standing in front of Royal theater. A-1 to A-5 went there. They invited P.W.5 and the deceased to come to the wine shop to take brandy. The deceased refused their invitation. A-1 and A-2 questioned the deceased as to how he could make fun of the wife of A-3 and asked the deceased to seek pardon from A-3's wife. The deceased refused their allegation and stated that he did not make fun of A-3's wife. At that time, a person, by name, Saravanan, came there. He intervened and requested A-1 to A-5 and the deceased to leave the place peacefully. A-2 left the place saying that "he will return" and proceeded towards north. A-1, A-3, A-4 and A-5 told the deceased that they need not quarrel and that they could settle the matter by talks and took the deceased towards north. P.W.5 was also taken along with the deceased. In front of the bus stand, there is a hotel and when they reached the hotel, A-2, who was waiting there with a knife in his hip, caught hold of the deceased and saying, "வாடா வசமாக மாட்டிக்கொண்டாய்; the free translation, of which, is, "come, you are now caught", and stabbed him on the middle of the stomach and thereafter, inflicted another stab on the stomach. The deceased attempted to run from the place, but A-5 cut him on the leg. A-3 cut the deceased on the head followed by A-4, who stabbed him on the back of his chest. The deceased fell down and A-1, saying that if Pugazhnthi is left like that he will not die and that he will die only if he is cut like a goat, inflicted two cuts on the neck of the deceased. Street lights were burning at the place and seeing this ferocious attack on the deceased, P.W.5 attempted to run from the place. A-2 and A-5 held him and warned him that he should not divulge this fact to anybody. P.W.5 ran to his house and hid himself. The occurrence was witnessed by P.Ws.3 and 4 as well as by others.

6. On 31.1.1994 at about 2.30 a.m., P.W.7, the Village Administrative Officer, Erode Town, was informed that a dead body is lying near the bus stop. P.W.7 went to the place and found a dead body with injuries. He prepared a complaint and proceeded to Erode Town Police Station and reached it at 3.00 a.m. The said complaint is Ex.P-4. He handed over the complaint, Ex.P-4, to P.W.9, the Head Constable, at 3.30 p.m. and on the complaint, P.W.9 registered a case in Crime No.133 of 1994 under Section 302 IPC. and prepared express reports. A copy of the printed first information report is marked as Ex.-.16. P.W.9 sent Exs.P-4 and P-16 to the higher officials and to the Court. He informed P.W.10, the Inspector of Police.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. P.W.10, on getting information over phone about the crime from P.W.9, reached the police station at 4.30 a.m. and obtained the copy of the printed first information report. He proceeded to the scene of occurrence and prepared an observation mahazar in the presence of P.W.7. The observation mahazar is Ex.P-12. He drew a rough sketch, Ex.P-17. He made preparations to take photographs of the scene of occurrence and accordingly, Lakshmanan, the Photographer, took photographs of the scene of occurrence. The photographs are M.Os.17 to 22 and their negatives are M.Os.23 to 28. P.W.10 conducted inquest over the body of Pugazhenthi between 6.00 a.m. and 9.00 a.m. and prepared Ex.P.18, the inquest report, during which, he examined P.W.2 and other witnesses, whose statements were recorded. At about 9.05 a.m., he seized a watch, M.O.1, and a ring, M.O.2, which were lying near the dead body, under a mahazar Ex.P.19. At about 9.30 a.m., the body was handed over to the Police Constable with a requisition to the doctor for conducting autopsy.

8. On receipt of the requisition, P.W.6, Civil Assistant Surgeon attached to Government Hospital, Erode, conducted autopsy on the body of Pugazhenthi and found the following injuries:-

1. A cut injury in front of neck running transversely 6 c.m. below the right ear and 6 c.m. from left ear length 17 cm x breadth 7 cm x depth 9 cm exposing the both wounds bone, carotid artery found to be cut on both sides, jugular vein found to be cut, muscles found to be cut. Larynx exposed and found to be cut.

2. A cut injury of 6x2x4 cm over left legs. Posterior aspect 14 cm from the popleteal fossa.

3. An incised wound of 2x1x4 cm over the abdomen in the middle 13 cm above the umbilicus.

4. A punctured wound of ½ x ½ x 4 cm over the lower abdomen on the right side 4 cm lateral to the umbilicus.

5. A punctured wound on ½ x ½ x 2 cm over the lower abdomen on the right side 4 cm lateral to the umbilicus.

6. A abrasion of 4 cm x 2 cm over the back 8 cm above the hip joint on the right side.

7. An incised wound 2x1 cm over the left cubital fossa.

8. An abrasion of 6x2 cm over the right fore

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

arm posterior aspect 5 cm below the elbow joint.

9.An abrasion of 2x1 cm over left gluteal region.

10.A cut injury over center of scalp 8x3x4 cm exposing the bone 18 cm above the occipital bone.

11.A punctured wound of ½ x ½ x 1 cm over back left side 15 cm. below the upper border of left scapula. Lateral to the vertebral column.

12.An abrasion of 1x1 cm over back right side on exploring the injury No.10. Fracture of right parietal bone present on exploring the injury Nos.2,3,6,7,8 and 9. No fracture of underlying bone. Injury Nos.1,2,3,7 & 10 are spindle shaped sharp edges.

The doctor issued Ex.P.1, the post-mortem certificate, with his opinion that the deceased would appear to have died of shock and haemorrhage due to carotid injury sustained by him.

9. P.W.10, continuing with his investigation, at 9.45 a.m. seized M.Os.5 and 6, the blood-stained earth and sample earth respectively and M.Os.7 and 8, the blood-stained tar portion and sample tar portion, under mahazar Ex.P-6. He proceeded to the hospital, where he found P.Ws.3 to 5 and questioned them. Their statements were recorded. On 1.2.1994 at about 2.00 p.m., he arrested A-1 and A-2, when they were proceeding in a moped towards west. A-1 gave a statement and in pursuance of the said statement, he took the police party and produced an aruval and a dhothi. A-2, in pursuance of the statement given by him, took the police party and produced a knife along with a TVS moped. On 2.2.1994, the material objects seized as on that day were forwarded to Court. A-1 and A-2 were sent to Court for remand. On the same day, he examined P.W.6, the doctor, who conducted autopsy and recorded his statement. On 4.2.1994, the officer came to know that A-3 and A-4 have surrendered before Judicial Magistrate, Thirupur, and they were questioned at Sub Jail, Thirupur, in the presence of the prison authorities. Thereafter, he filed a petition before the Magistrate to take them into custody and on 10.2.1994, they were brought to the police station and questioned. Both of them gave statements. The TVS moped, M.O.9, on being produced, was seized in pursuance of the statement given by A-4 under a mahazar Ex.P-8. A-4 produced a button knife, M.O.10, and the same was seized under a mahazar Ex.P-9 and A-3 produced M.O.5, an aruval, which was seized under a mahazar Ex.P-10. All the mahazars were attested by witnesses. The accused were sent to Court for remand. The material objects were

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

forwarded to Court requesting the Court to send them for analysis. On 11.2.1994, the officer came to know that A-5 has surrendered before Judicial Magistrate, Erode, and on the orders of the Court, he was taken into police custody and he was questioned. A-5 gave a statement and in pursuance of the admissible portion, he took the police party and produced an aruval, M.O.12, which was seized under a mahazar Ex.P.11. A.5 was sent back to the Court with the material objects. The Court, by sending the material objects, obtained Ex.P-22, the report of the Chemical Analyst and Ex.P-23, the report of the Serologist. The final report was filed against the accused after the completion of investigation on 6.5.1994.

10. The accused were questioned under Section 313 of the Cr.P.C. on the incriminating circumstances appearing against them. They denied all the circumstances. They did not examine any witness on their side. They did not also file any written statement.

11. The learned Senior Counsel, Mr.Asokan, leading the arguments, strenuously contends that there is no common object between the accused since, even according to the prosecution, A-2 left before the other accused took the deceased towards north in Mettur Road. According to him, if there had been a common object between the accused, A-2 would not have left the place. He further submits that P.W.3, having turned hostile, the trial Court ought not to have relied upon the evidence of P.Ws.4 and 5, since they are not only the friends of the deceased, but were also not examined at the time of inquest. On the above contentions, we have heard the learned Additional Public Prosecutor.

12. The accused did not dispute the cause of death of Pugazhenthi. The doctor, P.W.6, conducted autopsy and issued Ex.P-2, the post-mortem certificate, containing his opinion that death was on account of the injuries to the carotid. In Court, when he was examined, he has stated that the said injury is fatal in nature and that injuries 1, 2, 7 and 10 could have been caused with aruvals and injuries 3, 4, 5 and 11 could have been on account of stabbing and that injuries 6, 8, 9 and 12 could have been on account of a person falling on a rough surface. The prosecution, by examining P.W.6 and by marking Ex.P-2, the post-mortem certificate, issued by him, has established the cause of death of Pugazhenthi that he died on account of homicidal violence.

13. The prosecution examined three persons to speak about the occurrence as P.Ws.3, 4 and 5 and of them, P.W.3 turned hostile. P.Ws.4 and 5 have supported the prosecution version. It is no doubt true that they are friends of the deceased. But mere friendship by itself will not be a reason for this Court to reject their evidence, unless it is shown that their evidence is not trustworthy and no reliance can be placed upon them. We have perused the evidence of P.Ws.4 and 5 very meticulously. On going through the evidence, we find no artificiality in their evidence.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

It is no doubt true that P.Ws.4 and 5 did not go to the police station to give a complaint immediately on seeing the incident. But they have stated that on seeing the ferocious attack on the deceased, they were afraid and therefore, ran away to their respective houses and on the next day, went to the hospital on coming to know that dead body had been taken there. The evidence of P.W.10, the officer, who conducted investigation, shows that when he reached the hospital, he found the witnesses including P.Ws.3 to 5 and it corroborates the present version of P.Ws.4 and 5 that they went to the hospital on coming to know that the dead body of the deceased had been taken there. Merely because P.Ws.4 and 5 were not examined at the time of inquest, the Court cannot reject their evidence. The Supreme Court time and again held that non examination of the witnesses at the time of inquest is not a ground to reject their evidence. Since we do not find any answer in favour of the accused either in the cross-examination of P.W.4 or in the cross-examination of P.W.5, and since we do not find any reason to reject their evidence, we accept their evidence and hold that A-1, who is now dead and A-2 to A-5 have inflicted injuries on the deceased.

14. As regards the contention that there was no common object among the accused, it is stated only to be rejected. The evidence of P.Ws.4 and 5 discloses that initially at about 10.30 p.m., A-1 to A-5 accosted the deceased and it was A-1 and A-2, who threatened the deceased and asked him to seek pardon from the wife of A-3. The deceased refused to do so and at that time, one Saravanan, who came there, pacified the parties and asked them to leave the place peacefully. After Saravanan left the place, A-2 proceeded towards north in Mettur Road and immediately thereafter, the other four accused, telling the deceased that they need not quarrel, took the deceased towards north in the Mettur Road, the direction in which A-2 went. They took the deceased and P.W.5 to Sathi Road, where A-2 was standing. The conduct of A-2 going towards north in Mettur Road and the conduct of the other accused taking the deceased and P.W.5 towards the same direction immediately thereafter indicate that the other accused must have known that A-2 will be waiting at the particular point, which fact is strengthened by the subsequent words uttered by A-2 on seeing the deceased near the theatre, where the occurrence had taken place. On seeing the deceased, A-2 told him that "come, you are now caught" and thereafter, inflicted two injuries on the stomach of the deceased followed by the other accused, who cut him. If there had been no common object between the accused, then they would not have taken the deceased towards the same direction, where A.2 had gone and would not have attacked the deceased by joining A-2.

15. In GANGADHAR BEHERA AND OTHERS -vs- STATE OF ORISSA (JT 2002 (8) SC 135), the Supreme Court held that the crucial question to determine as to whether there was any common object is whether the assembly consisted of five or more persons and whether the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

said persons entertained one or more of the common objects, as specified in Section 141 and that it cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of the unlawful assembly. The Supreme Court further held that the only thing that is required to be proved is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141 and the word "object" means the purpose or design and, in order to make it "common", it must be shared by all. It is further held by the Supreme Court that in other words, the object should be common to the persons, who compose the assembly, that is to say, they should be all aware of it and concur in it and a common object may be formed by express agreement after mutual consultation, but it is by no means necessary and it may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it and once formed, it need not be continued to be the same and it may be modified or altered or abandoned at any stage. The Supreme Court further held that the expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object" and that it must be immediately connected with the common object by virtue of the nature of the object. The Supreme Court further held that there must be community of object and the object may exist only up to a particular stage, and not thereafter and members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC. may be different on different members of the same assembly.

16. The principles enunciated in the above judgment fully apply to the facts of this case. As stated by the Supreme Court, common object may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. In this case, A-1 and A-2 threatened the deceased and asked him to seek pardon from the wife of A-3 and when the deceased refused, they picked up a quarrel with him and that Saravanan, who was passing by that time, intervened and pacified them. Thereafter, A-2 went towards north in Mettur Road and immediately thereafter, the deceased was taken in the same direction in which A-2 went and when the deceased was taken to a place where A-2 was standing, on seeing the deceased, A-2 stabbed him after saying, "come, you are now caught", and inflicted injuries indiscriminately and that A-1 cut the deceased on his neck. The above facts, therefore, show that the conduct of A-3 to A-5 was only a ruse in taking the deceased towards north by telling him that they need not quarrel and that they could settle the matter by talks, so that he can be taken to a place, where A-2 is waiting for the purpose of

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

attacking him. We are, therefore, of the view that all the accused shared the common object of each other and took the deceased to the place, where A-2 was standing, where he was stabbed, cut and murdered. The evidence clearly establishes the common object of A-2 to A-5 and they were rightly convicted by the learned Sessions Judge under Section 302 read with 149 IPC.

17. In view of the discussion made above, the appeal filed by the first appellant abates and in so far as it relates to A-2 to A-5, the conviction and sentence imposed upon them by the learned Sessions Judge are confirmed and the appeal filed by them is dismissed.

18. It is reported that A-2 to A-5 are on bail. The learned Sessions Judge shall take steps to commit them to prison to undergo the remaining period of sentence.

bs/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Judl. Magistrate II, Erode.

2.-do- Thro' The Chief Judl. Magistrate, Erode.

3.The II Additional Sessions Judge, Erode.

4.-do- through the Principal Sessions Judge, Erode.

5.The Inspector of Police, Erode Town Police Station.

6.The Superintendent, Central Prison, Coimbatore

7.The District Collector, Erode.

8.The Director General of Police, Madras.

9.The Public Prosecutor, High Court, Madras.

10.The Superintendent, Central Jail, Palayamkottai.

Crl.A.No.644 of 1996

TEJ (CO)
EJ

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/